

Appendix D. Programmatic Agreement

**PROGRAMMATIC AGREEMENT
AMONG
FEDERAL HIGHWAY ADMINISTRATION
ARIZONA DEPARTMENT OF TRANSPORTATION
ARIZONA STATE HISTORIC PRESERVATION OFFICE
MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION
ARIZONA STATE LAND DEPARTMENT
ARIZONA STATE MUSEUM
FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
CITY OF GLENDALE
ARMY CORPS OF ENGINEERS
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
GILA RIVER INDIAN COMMUNITY
SAN CARLOS APACHE TRIBE
YAVAPAI-APACHE NATION
PASCUA-YAQUI TRIBE
YAVAPAI-PRESCOTT INDIAN TRIBE**

**REGARDING TREATMENT OF HISTORIC PROPERTIES ALONG STATE
ROUTE 303 LOOP AND THE ASSOCIATED ROADWAY DRAINAGE SYSTEM
BETWEEN THE GILA RIVER AND US 60
PROJECT NUMBER NH 303-A(AFY)
TRACS NUMBER S303 MA 003 H5621 01L
MARICOPA COUNTY, ARIZONA**

WHEREAS, the Federal Highway Administration (FHWA) and the Arizona Department of Transportation are proposing corridor improvements to the State Route 303 Loop (SR 303) corridor to construct a freeway and associated drainage system between U.S. 60 and the Gila River, located in the Cities of Surprise, Glendale, and Goodyear as well as unincorporated portions of Maricopa County, a federally-funded project in Maricopa County, Arizona (hereafter referred to as “the Project”); and

WHEREAS, a drainage outfall channel will be constructed paralleling the roadway and extending south to the Gila River; and

WHEREAS, the area of potential effect (APE) for this project may have an effect upon historic properties, which are defined as “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places, including artifacts, records, and material remains related to such a property or resource” (National Historic Preservation act [NHPA] 16 U.S.C. 470w, Title III, Section 301 [5]); and

WHEREAS, the proposed project may have an effect upon unidentified subsurface archaeological resources, and

WHEREAS, the proposed project may have an adverse effect upon Traditional Cultural Properties (TCPs) which are defined as places that are “eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that a) are rooted in that community’s history, and b) are important in maintaining the continuing cultural identity of the community” (National Park Service National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Properties); and

WHEREAS, potential TCPs affected by this project have not yet been identified; and

WHEREAS, in their role as lead federal agency, FHWA has consulted with the SHPO pursuant to 36 CFR Part 800, regulations implementing Section 106 of the NHPA (16 U.S.C. 470f) as revised in 2000; and

WHEREAS, SHPO is authorized to enter into this Programmatic Agreement (PA) in order to fulfill its role of advising and assisting Federal agencies in carrying out their Section 106 responsibilities under the following federal statutes: Sections 101 and 106 of the NHPA of 1996, as amended, 16 U.S.C. 470f, and pursuant to 36 CFR Part 800, regulations implementing Section 106, at 800.2(c)(1)(i) and 800.6(b); and

WHEREAS, SHPO is authorized to advise and assist federal and state agencies in carrying out their historic preservation responsibilities and cooperate with these agencies under A.R.S. 41-511.04(D)(4); and

WHEREAS, ADOT, acting as agent for FHWA, has participated in consultation and has been invited to be a signatory to this PA; and

WHEREAS, FHWA has consulted with the Arizona State Historic Preservation Office (SHPO), the Arizona Department of Transportation (ADOT), the Maricopa County Department of Transportation (MCDOT), the Arizona State Land Department (ASLD), the City of Glendale (COG), the Flood Control District of Maricopa County (FCDMC), the Army Corps of Engineers (Corps), the Salt River Pima-Maricopa Indian Community (SRPMIC), the Gila River Indian Community (GRIC), the San Carlos Apache Tribe (SCAT), the Yavapai-Apache Nation (YAN), the Pascua-Yaqui Tribe, and the Yavapai-Prescott Indian Tribe (YPIT); and

WHEREAS, an agreement regarding the treatment and disposition of Human Remains, associated funerary objects, and objects of cultural patrimony would be developed by the Arizona State Museum (ASM) for state, county, municipal, and private land; and

WHEREAS, testing and data recovery necessitated by the Project, located on state, county, municipal, and private land must be permitted by the Arizona State Museum pursuant to A.R.S. 41-842; and

NOW, THEREFORE, all parties agree that upon FHWA's decisions to proceed with the Project, FHWA shall ensure that the following stipulations are implemented in order to take into account the effects of the Project on historic properties, and that these stipulations shall govern the project and all of its parts until this agreement expires or is terminated.

Stipulations

FHWA will ensure that the following measures are carried out.

1. Plans submittal and identification of Area of Potential Effect (APE)

Upon receipt by ADOT, copies of the plans and related documents pertaining to this undertaking including the 30%, 60% and 95% draft construction documents, the Project assignments, design concept reports and cultural resources survey reports will be provided to the consulting parties for review and comment. The consulting parties will have 30 calendar days to respond.

2. Identification of historic properties and recommendation of effect

ADOT, on behalf of FHWA, in consultation with all parties to this PA, shall ensure that new inventory surveys of the Project APE will include identification of all cultural resources and determinations of eligibility that are made in accordance with 36 CFR 800.4 for all historic properties.

3. Identification, Evaluation, Documentation, and Mitigation of Impacts to Traditional Cultural Properties

FHWA in consultation with all parties to this PA, shall ensure that consultation with the Indian Tribes that may attach religious or cultural importance to affected properties will continue in order to identify, evaluate, document, and mitigate possible impacts to TCPs according to National Park Service National Register Bulletin #38: Guidelines for Evaluating and Documenting Traditional Properties.

4. Geotechnical Investigations

As geotechnical investigations may adversely impact historic properties within the project's corridor, ADOT proposes that historic properties would be avoided by geotechnical investigations wherever possible. In the event that historic properties cannot be avoided, ADOT, in consultation with the consulting parties, shall determine appropriate treatment for the historic property. Data recovery at geotechnical investigation locations requires a Treatment Plan, as described below, be developed. Geotechnical investigations outside the boundaries of

historic properties may proceed prior to the completion of any data recovery required at other locations.

5. Development of a Treatment Plan

If testing, data recovery, or other treatment become necessary to mitigate an adverse effect to a historic property, the treatment plan will be submitted by ADOT, on behalf of FHWA, to all parties to this PA for 30 calendar days' review. The treatment plan will be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37). Unless any signatory or concurring party objects to the testing plan and data recovery plan within 30 calendar days after receipt of the plans, ADOT shall ensure that it is implemented prior to construction.

6. The Treatment Plan will specify:

- a) The properties or portions of properties where data recovery is to be carried out. Also, it will specify any property or portion of property that would be destroyed or altered without treatment;
- b) The results of previous research relevant to the Project, the research questions to be addressed through testing and data recovery, with an explanation of their relevance and importance;
- c) The field and laboratory analysis methods to be used, with an explanation of their relevance to the research questions;
- d) The methods to be used in analysis, data management, and dissemination of data to the professional community and the public, including a proposed schedule for Project tasks, and a schedule for the submission of draft and final reports to consulting parties;
- e) The proposed disposition and curation of recovered materials and records in accordance with 36 CFR 79;
- f) Procedures for monitoring, evaluating and treating discoveries of unexpected or newly identified properties during construction of the Project, including consultation with other parties;
- g) A protocol for the treatment of Human Remains, in the event that such remains are discovered, describing methods and procedures for the recovery, analysis, treatment, and disposition of Human Remains, Associated Funerary Objects, and Objects of Cultural Patrimony. This protocol will reflect concerns and/or conditions identified as a result of consultations among parties to this PA.

7. Review and comment on the Treatment Plan

- a) Upon receipt of a draft of the treatment plan, ADOT, on behalf of FHWA, will review and subsequently submit such documents concurrently to all consulting parties for review. All consulting parties will have 30 calendar days from receipt to review and provide comments to ADOT. All comments shall be in writing with copies provided to the other consulting parties. Lack of response within this review period will be taken as concurrence with the testing plan and data recovery plan.
- b) If revisions to the treatment plan and data recovery plan are made all consulting parties have 20 calendar days from receipt to review the revisions and provide comments to ADOT. Lack of response within this review period will be taken as concurrence with the testing plan and data recovery plan or report.
- c) Once the treatment plan is determined adequate by all parties (with SHPO concurrence), FHWA shall issue authorization to proceed with the implementation of the testing plan or data recovery plan, subject to obtaining all necessary permits.
- d) Final drafts of the testing plan and data recovery plan will be provided to all consulting parties.

8. Review and Comment on Preliminary Report of Findings

- a) Within 20 days following completion of fieldwork, the institution, firm, or consultant responsible for the work will prepare and submit a brief Preliminary Report of Findings within 20 days of completion of fieldwork.
- b) Following receipt of a draft of the Preliminary Report, ADOT, on behalf of FHWA, will review and subsequently submit such documents concurrently to all consulting parties for review. All consulting parties will have 20 calendar days from receipt to review and provide comments to ADOT. All comments shall be in writing with copies provided to the other consulting parties. Lack of response within this review period will be taken as concurrence with the Report.
- c) If revisions to the Preliminary Report of Findings are made, all consulting parties have 20 calendar days from receipt to review the revisions and provide comments to ADOT. Lack of response within this review period will be taken as concurrence with the report.
- d) Once the Preliminary Report of Findings has been accepted as a final document, ADOT, on behalf of FHWA, will notify appropriate Project participants that construction may proceed.

9. Review and Comment on Treatment Reports

- a) Following completion of any mitigative treatment, a report will be prepared incorporating all appropriate data analyses and interpretations, and the report will be submitted to signatories and concurring parties who will be provided with 30 calendar days to review and comment upon the treatment report.
- b) Upon receipt of the treatment reports, ADOT, on behalf of FHWA, will review and subsequently submit such documents concurrently to all consulting parties for review. All consulting parties will have 20 calendar days, or as specified under consultation, from receipt to review and provide comments to ADOT. All comments shall be in writing with copies provided to the other consulting parties. Lack of response within this review period will be taken as concurrence with the testing report and data recovery report.
- c) If revisions to the testing report and data recovery report are made, all consulting parties have 20 calendar days from receipt to review the revisions and provide comments to ADOT. Lack of response within this review period will be taken as concurrence with the testing report and data recovery report.

10. Standards for Monitoring, Testing, and Data Recovery

All historic preservation work carried out pursuant to this Agreement shall be carried out by or under the supervision of a person, or persons, meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739).

11. Curation

All materials and records resulting from the testing plan and data recovery plan conducted within the Project area, except as noted below, shall be curated in accordance with standards 36 CFR 79 and guidelines generated by ASM. The repository for materials either will be ASM or one that meets those standards and guidelines in Maricopa County. All materials subject to repatriation under A.R.S. § 41-844 and A.R.S. § 41-865 shall be maintained in accordance with the burial agreement until any specified analyses, as determined following consultation with the appropriate Indian tribes and individuals, are complete and the materials are returned.

12. Additional Inventory Survey

ADOT, on behalf of FHWA, in consultation with all parties to this PA shall ensure that new inventory surveys of additional rights-of-way and temporary construction easements will include determinations of eligibility that are made in accordance with 36 CFR § 800.4(c) for all historic properties, including any added staging or use areas. Should any party to this PA disagree with FHWA regarding eligibility, the SHPO shall be consulted and resolution sought within 30 calendar days. If the

FHWA and SHPO disagree on eligibility, FHWA shall request a formal determination from the Keeper of the National Register.

13. Objection by a Signatory or Concurring Party

Should any signatory or concurring party to this PA object within 30 days to any plan or report provided for review or to any aspect of this undertaking related to historic preservation issues, FHWA shall consult with the objecting party to resolve the objection. If the objection cannot be resolved, FHWA shall request further comments of the Council with reference only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this PA that are not the subject of the dispute will remain unchanged.

14. Discoveries

If previously unknown cultural resources are discovered after construction begins, the person in charge of the construction shall promptly report the discovery to the ADOT Historic Preservation Specialist, representing FHWA. If human or funerary objects are discovered, ADOT shall require construction to immediately cease within the area of the discovery, take steps to secure the discovery, and notify and consult with appropriate Native American groups to determine treatment and disposition measures in accordance with the previously implemented burial agreement. The Director of the ASM (the Director) shall also be informed. In consultation with the Director and ADOT, on behalf of FHWA, the person in charge of construction shall immediately take steps to secure and maintain preservation of the discovery. If the discovery appears to involve Human Remains as defined in ASM rules implementing A.R.S. § 41-844 and 41-865, ASM and FHWA shall ensure that the discovery is treated according to the burial agreement.

If Human Remains are not involved, then the ADOT Historic Preservation Specialist shall evaluate the discovery, and in consultation with FHWA and SHPO, determine if the treatment plan previously approved by ASM is appropriate to the nature of the discovery. If appropriate, the treatment plan shall be implemented by ADOT, on behalf of FHWA. If the treatment plan is not appropriate to the discovery, FHWA shall ensure that an alternate plan for the resolution of adverse effect is developed pursuant to 36 CFR § 800.6 and circulated to the consulting parties, who will have 48-hours to review and comment upon the alternate plan. FHWA shall consider the resulting comments, and shall implement the alternate plan once a project specific permit has been issued.

15. Amendments

This PA may be amended by the signatories pursuant to 36 CFR § 800.6 (c) (7). FHWA shall file any amendments with the Council and provide notice to the concurring parties.

16. Termination

Any signatory may terminate the PA by providing 30 day written notification to the other signatories. During this 30-day period, the signatories may consult to seek agreement on amendments or other actions that would avoid termination pursuant to 36 CFR § 800.6 (b). If the parties cannot agree on actions to resolve disagreements, FHWA will comply with 36 CFR § 800.7(a).

17. In the event the FHWA or ADOT cannot carry out the terms of this PA, the FHWA will comply with 36 CFR § 800.3 through 800.6.

This PA shall be null and void if its terms are not carried out within ten (10) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms. Execution of this PA by the signatories and its subsequent filing with the Council is evidence that the Federal Highway Administration has afforded the Advisory Council on Historic Preservation an opportunity to comment on the Project and its effects on historic properties, and that the Federal Highway Administration has taken into account the effects of the undertaking on historic properties.

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

By Steph D. Th

Date 8/24/07

Title Environmental Program Manager

ARIZONA STATE HISTORIC PRESERVATION OFFICE

By James GAWKIN

Date 8/29/07

Title AZSHPO

INVITED SIGNATORIES

ARIZONA DEPARTMENT OF TRANSPORTATION

By Thor Anderson

Date 8-8-07

Title Manager, Environmental Planning Group

CONCURRING PARTIES

MARICOPA COUNTY OF TRANSPORTATION

By _____

Date _____

Title _____

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

By _____

Date _____

Title _____

CITY OF GLENDALE

By Russell D. Jones

Date 8/29/07

Title Historic Preservation Officer

ARIZONA STATE LAND DEPARTMENT

By _____

Date _____

Title _____

INVITED SIGNATORIES

ARIZONA DEPARTMENT OF TRANSPORTATION

By Shon Anderson

Date 8-8-07

Title Manager, Environmental Planning Group

CONCURRING PARTIES

MARICOPA COUNTY OF TRANSPORTATION

By Craig Appel

Date 09/17/07

Title Environmental Planning Mgr.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

By _____

Date _____

Title _____

CITY OF GLENDALE

By _____

Date _____

Title _____

ARIZONA STATE LAND DEPARTMENT

By _____

Date _____

Title _____

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

By _____

Date _____

Title _____

ARIZONA STATE HISTORIC PRESERVATION OFFICER

By _____

Date _____

Title _____

INVITED SIGNATORIES

ARIZONA DEPARTMENT OF TRANSPORTATION

By _____

Date _____

Title _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By _____

Date _____

Title _____

CONCURRING PARTIES

MARICOPA COUNTY OF TRANSPORTATION

By *[Signature]*

Date 01-16-07

Title Environment Programs Mgr
MCDOT Transportation Planning Director

ARMY CORPS OF ENGINEERS

By _____

Date _____

Title _____

ARIZONA STATE MUSEUM

By *[Signature]*

Date Nov 29/07

Title Associate Curator Archaeology

GILA RIVER INDIAN COMMUNITY

By _____

Date _____

Title _____

PASCUA YAQUI TRIBE

By _____

Date _____

Title _____

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____

Date _____

Title _____

SAN CARLOS APACHE TRIBE

By _____

Date _____

Title _____

ARMY CORPS OF ENGINEERS

By _____

Date _____

Title _____

ARIZONA STATE MUSEUM

By _____

Date _____

Title _____

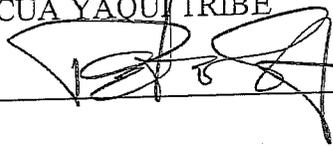
GILA RIVER INDIAN COMMUNITY

By _____

Date _____

Title _____

PASCUA YAQUI TRIBE

By  _____

Date _____

Title _____

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____

Date _____

Title _____

SAN CARLOS APACHE TRIBE

By _____

Date _____

Title _____

YAVAPAI-APACHE NATION

By _____

Date _____

Title _____

YAVAPAI-PRESCOTT INDIAN TRIBE

By _____

Date _____

Title _____